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CASE NO. 95-1222

In The
SUPREME COURT OF THE UNITED STATES
October Term 1995

CLARENCE N. S. SHAK, *Petitioner*,

vs.

KEITH TANAKA, etc., et al., *Respondents*

Petition for Writ of Certiorari to
the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY BRIEF

CLARENCE SHAK
610 Cooke Street, Apt. No. 211
Honolulu, Hawaii 96813
Telephone No. (808) 591-0108

Petitioner pro se

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PETITIONER'S REPLY BRIEF

Petitioner is uncertain as to whether or not this Reply Brief needs to be filed for it is here believed that the brief filed by Respondents Keith Tanaka, Michael Nakamura, and Keith Kaneshiro in opposition to the Petition for Writ of Certiorari filed in this case will likely not even be considered by this Court and the Counsel of Record (Girard Douglas Lau) for Respondents Katherine Dashiell, Sabrina McKenna, and State of Hawaii has already indicated that he does not intend to file a response to the above mentioned petition unless one is requested by the Court.

Petitioner believes that the brief filed by Respondents Keith Tanaka, Michael Nakamura, and Keith Kaneshiro in opposition to the Petition for Writ of Certiorari filed in this case is frivolous in nature because that brief does not even address the questions presented by Petitioner in his petition but instead provides answers to other questions evidently fabricated by the attorneys representing the above named respondents.

Petitioner's belief that the brief filed by Respondents Keith Tanaka, Michael Nakamura, and Keith Kaneshiro in opposition to the Petition for Writ of Certiorari filed in this case will likely not even be considered by this Court is based on his understanding of Rule 14.1 (a) of the Supreme Court

rules which includes the statement, "Only the questions set forth in the petition, or fairly included therein, will be considered by the Court."

I.

THIS COURT SHOULD GRANT THIS PETITION BECAUSE AN EXTENDED RESTRAINT WAS IMPOSED UPON PETITIONER'S LIBERTY.

Respondents in their brief have taken the position that there was no extended restraint imposed upon Petitioner's liberty in the instant case. It appears to Petitioner that Respondents have taken this position because they do not realize that when this Court used the expression "extended restraint of liberty" in *Gerstein* v. *Pugh*, 420 U.S. at 114, in which this Court said, "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest..." the Court did not mean a restraint imposed upon an arrested person's liberty for a substantial period of time (as Respondents evidently believe the Court means) but meant a restraint on the liberty of such a person above and beyond the period of time a restraint is constitutionally permitted to be imposed upon such a person's personal liberty.

Bearing in mind the fact that this Court established in *Gerstein* together with *County of Riverside* v. *McLaughlin*, 500 U.S. 44, that a police department is constitutionally permitted to impose a restraint upon the liberty of a person arrested without a warrant but only for as long as such a restraint is necessary "to take the administrative steps incident to arrest" and, in general, no longer than 48 hours after the warrantless arrest has been made, it becomes evident that if such a person is released from the custody of the police department it would be after the police department has

completed taking the administrative steps incident to such an arrest. Therefore, if a restraint were to be placed upon that released person's liberty such as by requiring that person to appear in a certain court on a certain date in the future, such a person has had an "extended restraint" imposed upon his or her liberty. In such a case, this Court said in *Gerstein*, a judicial determination of probable cause must first be made in order to justify the imposition of such a restraint or the state will have violated that person's Fourth Amendment guarantee of freedom.

A writ of certiorari should be granted because the facts in this case clearly show that Petitioner had an extended restraint imposed upon his liberty and no judicial determination of probable cause was ever made in this case.

II.

THIS COURT SHOULD GRANT THIS PETITION BECAUSE PETITIONER WAS DEPRIVED OF HIS LIBERTY AND PROPERTY WITHOUT DUE PROCESS OF LAW.

The facts of this case as set forth on pages 2-4 of the brief of Respondents Keith Tanaka, Michael Nakamura, and Keith Kaneshiro in opposition to the Petition for Writ of Certiorari filed in this case clearly indicate that Respondents are not only fully aware of but further agree with the fact that there was no written accusation of any kind filed against Petitioner in the court in which Petitioner was prosecuted and that court had assumed it had jurisdiction over Petitioner, had put him on trial, and had fined him after he had been found guilty of having committed certain offenses.

Petitioner is therefore puzzled as to why Respondents argue that it is well established in law that if an information is

filed in any misdemeanor case, there is no need for a complaint to be filed in that case. Since Respondents knew or should have known full well that there was no information filed in the instant case, it must be said that the above argument by Respondents is frivolous in nature.

Petitioner is further puzzled as to why Respondents argue in their brief that due process does not require an arraignment and does not require that a copy of a formal charge be given to a criminal defendant as long as that person knows what he of she is accused of and he or she is able to defend himself or herself. Petitioner has already shown on page 12 of his petition that just as a person who is already dead cannot ever be murdered, it has been well established in law that a person, such as Petitioner, who has not had any written accusation filed against him or her charging him or her with having committed a certain offense cannot ever be prosecuted for having committed that offense. This is true even if the accused person "knows what he or she is accused of and he or she is able to defend himself."

The Court should grant this petition because the prosecution of Petitioner was carried out without due process of law. The Fourteenth Amendment of the Constitution of the United States, of course, forbids such a prosecution.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Clarence Shak

Clarence Shak, *Petitioner pro se*
610 Cooke Street, Apt. No. 211
Honolulu, Hawaii 96813